

Civil Justice (Miscellaneous Amendments) Ordinance 2008

Amendments to District Court Ordinance (Cap. 336)

Remarks

38A. Execution of instruments by order of the Court

Section 35

(1) Subsection (2) applies where –

- (a) the Court has given or made a judgment or order directing a person to –
 - (i) execute any conveyance, contract or other document; or
 - (ii) endorse any negotiable instrument; and
- (b) that person –
 - (i) neglects or refuses to comply with the judgment or order;
 - or
 - (ii) cannot, after reasonable inquiry, be found.

(2) The Court may, on such terms and conditions, if any, as may be just, order that the conveyance, contract or other document is to be executed, or that the negotiable instrument is to be endorsed, by such person as the Court may nominate for that purpose.

(3) A conveyance, contract, document or instrument executed or endorsed in accordance with subsection (2) has the same effect as if it had been executed or endorsed by the person originally directed to execute or endorse it.

(4) Nothing in this section abridges the powers of the Court to proceed by attachment against any person neglecting or refusing to execute or endorse any such instrument.

~~42. Transfer to the Court of First Instance of proceedings within the jurisdiction of the Court~~

Section 45
Lands Tribunal

~~The Court may, either of its own motion or on the application of any party, order the transfer to the Court of First Instance of all or part of any action or proceeding within the jurisdiction of the Court.~~

~~(Replaced 28 of 2000 s. 23)~~

42. Transfer of proceedings to the Court of First Instance or the Lands Tribunal

The Court may, either of its own motion or on the application of any party, order at any stage the transfer to the Court of First Instance or the Lands Tribunal of all or part of any action or proceedings before it which are within the jurisdiction of the Court of First Instance or the Lands

Tribunal, as the case may be.

44A. Costs in transferred cases, etc.

- (1) This section applies to an action or proceeding transferred –
 - (a) from the Court of First Instance to the Court;
 - (b) from the Court to the Court of First Instance; or
 - (c) from a tribunal to the Court.
- (2) The court or tribunal that orders the transfer may make an order for costs prior to the transfer and of the transfer of proceedings.
- (3) The costs of the whole proceedings both before and after the transfer are in the discretion of the court to which the proceedings are transferred subject to any order made by the court or tribunal which ordered the transfer.
- (4) The court to which the proceedings are transferred has power to order costs and order the scales on which the costs of the several parts of the proceedings are to be taxed. The costs of the whole proceedings are to be taxed in the court to which the proceedings are transferred.
- (5) In an action founded on contract, quasi-contract or tort, for the proceedings in the Court of First Instance before the transfer, the Court may, if satisfied that there was sufficient reason for bringing the action in the Court of First Instance and subject to any order of the Court of First Instance, allow costs on the Court of First Instance scale.

~~(6) Where proceedings in which the Court has jurisdiction are brought in the Court of First Instance, the Court shall order costs on the scale and in the amount as if the proceedings had been brought in the Court, unless the proceedings were brought by leave of the Court of First Instance or unless the Court of First Instance otherwise orders.~~

Section 4
Rec 9

~~(Added 28 of 2000 s. 23)~~

47A. Power of the Court to order disclosure, etc. of documents before commencement of proceedings

- (1) A person who appears to the Court to be likely to be a party to subsequent proceedings ~~for personal injuries or arising out of the death of a person~~ may apply to the Court for an order for discovery of documents against a person who is likely to be a party to the proceedings and who has in his possession, custody or power documents directly relevant to an issue arising out of the claim.

Section 15
Rec 75 & 77

- (2) The application is to be made in accordance with rules of court.

Remarks

(3) The Court may order the person, if it appears to it that the person is likely to have or to have had in his possession, custody or power any **directly** relevant documents –

Section 15
Rec 75 & 77

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce the documents in his possession, custody or power to the applicant or, on the conditions specified in the order –
 - (i) to the applicant’s legal advisers;
 - (ii) to the applicant’s legal advisers and a medical or other professional adviser of the applicant; or
 - (iii) if the applicant has no legal adviser, to a medical or other professional adviser of the applicant.

(Added 28 of 2000 s. 24)

(4) For the purposes of subsections (1) and (3), a document is only to be regarded as directly relevant to an issue arising out of a claim in the anticipated proceedings if –

Section 15
Rec 75 & 77

- (a) the document would be likely to be relied on in evidence by any party in the proceedings; or**
- (b) the document supports or adversely affects any party’s case.**

47B. Extension of powers of the Court to order disclosure of documents, inspection of property, etc.

(1) A party to proceedings in an action, in which a claim ~~for personal injuries or arising out of the death of a person~~ is made, may apply to the Court in accordance with rules of court for an order for discovery of documents against a person who is not a party to the proceedings and who is likely to have or to have had in his possession, custody or power documents relevant to an issue arising out of the claim.

Section 20
Rec 78

(2) The Court may order the person, if it appears to it that the person is likely to have or to have had in his possession, custody or power any relevant documents –

- (a) to disclose whether those documents are in his possession, custody or power; and
- (b) to produce the documents in his possession, custody or power to the applicant or, on the conditions specified in the order –
 - (i) to the applicant’s legal advisers;
 - (ii) to the applicant’s legal advisers and a medical or other professional adviser of the applicant; or
 - (iii) if the applicant has no legal adviser, to a medical or other professional adviser of the applicant.

(3) A party to proceedings in an action, in which a claim ~~for personal injuries or arising out of the death of a person~~ is made, may apply to the Court for an order against a person who is not a party to the proceedings for, and the Court

Section 20
Rec 78

may order –

- (a) the inspection, photographing, preservation, custody and detention of property which is not the property of, or in the possession of, a party to the proceedings but which is the subject-matter of the proceedings or as to which any question arises in the proceedings;
- (b) the taking of samples of the property mentioned in paragraph (a) and the carrying out of any experiment on or with the property.

(4) An application under this section is to be made in accordance with rules of court.

(5) The powers in this section are in addition to the power of the Court to make orders which is exercisable apart from this section.

(6) In this section, “property” (財產) includes any land, chattel or other physical property of any description.

(Added 28 of 2000 s. 24)

47D. Powers of the Court exercisable before commencement of action

(1) A person authorized by the rules may, in proceedings in an action, in which a claim ~~for personal injuries or arising out of the death of a person~~ is made, apply to the Court for an order for and the Court may order –

Section 16
Rec 75-77

- (a) the inspection, photographing, preservation, custody and detention of property which may become the subject-matter of the proceedings or as to which any question may arise in the proceedings;
- (b) the taking of samples of the property mentioned in paragraph (a) and the carrying out of any experiment on or with the property.

(2) An application under this section is to be made in accordance with rules of court.

(3) Rules may be made to include –

- (a) the manner in which an application for an order can be made and by whom;
- (b) the circumstances in which an order can be made; and
- (c) the incidental, supplementary and consequential provisions which the Rules Committee may consider necessary or expedient.

(4) In this section, “property” (財產) includes any land, chattel or other physical property of any description.

47E. Application to Government of sections 47A to 47D

Section 21
Rec 78

(1) Section 47D binds the Government so far as it relates to property (within the meaning of that section) which appears to the Court to be likely to become

the subject-matter of subsequent proceedings ~~for personal injuries or arising out of the death of a person.~~

(2) Sections 47A, 47B and 47C bind the Government.

(3) The Court shall not make an order under section 47A, 47B or 47D if it considers that compliance with an order would be likely to be injurious to the public interest.

(Added 28 of 2000 s. 24)

53. Costs

(1) The costs of and incidental to all proceedings in the Court, including the administration of estates and trusts, are in the discretion of the Court, and the Court has full power to determine by whom and to what extent the costs are to be paid.

~~(2) Subject to specific provision made in this or any other Ordinance (other than subsidiary legislation made under this or any other Ordinance), subsection (1) does not authorize an award of costs against a person who is not a party to the relevant proceedings.~~

Section 32

~~(Added 28 of 2000 s. 28)~~

(2) Without prejudice to the generality of subsection (1), the Court may, in accordance with rules of court, make an order awarding costs against a person who is not a party to the relevant proceedings, if the Court is satisfied that it is in the interests of justice to do so.

(3) In any civil proceedings before it, the Court may, in accordance with rules of court, by order disallow, or order the legal representative concerned to meet, the whole or any part of any wasted costs.

Section 23
Rec 94-97

(4) When determining whether or not to make an order under subsection (3), the Court shall, in addition to all other relevant circumstances, take into account the interest that there be fearless advocacy under the adversarial system of justice.

(5) In subsection (3), “wasted costs” (虛耗訟費) means any costs incurred by a party as a result of –

(a) an improper or unreasonable act or omission; or

(b) any undue delay or other misconduct or default,

on the part of any legal representative, whether personally or through an employee or agent of the legal representative.

(6) In this section, “legal representative” (法律代表), in relation to a party to any proceedings, means a counsel or solicitor conducting litigation on behalf of the party.

53A. Costs-only proceedings

(1) This section applies where –

- (a) the parties to a dispute have agreed on all the issues in dispute, including who is to pay the costs of and incidental to the dispute;
- (b) the agreement has been made or confirmed in writing;
- (c) no proceedings relating to the dispute have been commenced;
and
- (d) the parties have failed to agree on the amount of the costs of and incidental to the dispute.

(2) Subject to any other Ordinance, either party to the agreement may commence proceedings for an order for the costs of and incidental to the dispute, in accordance with rules of court.

(3) In any proceedings commenced under subsection (2) or transferred to the Court under section 52C of the High Court Ordinance (Cap. 4), the Court may –

- (a) make an order for the costs of and incidental to the dispute to be taxed or assessed;
- (b) make an order awarding costs to or against any party to the proceedings; and
- (c) make an order awarding costs against a person who is not a party to the proceedings, if it is satisfied that it is in the interests of justice to do so.

(4) A reference to costs in subsection (3)(b) and (c) is a reference to the costs of and incidental to the proceedings commenced under subsection (2) or transferred to the Court under section 52C of the High Court Ordinance (Cap. 4).

(5) The Court has jurisdiction to make an order under subsection (3) if the amount of the party's claim for those costs does not exceed \$1,000,000.

(6) In this section, "Court" (區域法院) includes the Registrar and a master of the Court.

53B. Transfer of costs-only proceedings to Court of First Instance

(1) The Court may, either of its own motion or on the application of any party, order the transfer of proceedings commenced under section 53A(2) to the Court of First Instance.

(2) An order may be made under this section at any stage of the proceedings.

53C. Scale of costs on which costs awarded under section 53A are taxed

Section 5
Rec 9

(1) Where the Court has made an award of costs under section 53A(3), it may order that those costs be taxed in accordance with –

- (a) Schedule 1 and Schedule 2 to Order 62 of the Rules of the District Court (Cap. 336 sub. leg. H); or**
- (b) the First Schedule and the Second Schedule to Order 62 of the Rules of the High Court (Cap. 4 sub. leg. A).**

(2) Where an award of costs under section 53A(3) is made by the Registrar or a master of the Court, the power of the Court under subsection (1) in relation to those costs may be exercised by the Registrar or that master (as the case may be).

63. Appeal to Court of Appeal Appeals in civil matters

Section 28
Rec 110-113,
& 115

Appeals

(1) Subject to subsection (3), an appeal can, with leave **of a judge or the Court of Appeal**, be made to the Court of Appeal from every judgment, order or decision of a judge in any civil cause or matter.

(1A) Subject to subsection (1B), an appeal lies as of right to a judge in chambers from a judgment, order or decision of a master in any civil cause or matter.

(1B) Where rules of court provide that an appeal from a specified judgment, order or decision of a master lies to the Court of Appeal, the appeal may be made to the Court of Appeal with leave of a master or the Court of Appeal.

(2) An appeal is subject to rules of court.

(3) A person against whom an order is made pursuant to section 20, 29, 48B ~~or 52D~~, **52D, 52E or 53(3)** is entitled to appeal to the Court of Appeal without leave.

(Replaced 28 of 2000 s. 33)

(4) In this section, “master” (聆案官) means the Registrar, a deputy registrar or assistant registrar.

Remarks

Section 29
Rec 110-113,
& 115

63A. Leave to appeal

- (1) Leave to appeal granted under section 63 may be granted –
- (a) in respect of a particular issue arising out of the judgment, order or decision; and
 - (b) subject to such conditions as the judge, the master or the Court of Appeal hearing the application for leave considers necessary in order to secure the just, expeditious and economical disposal of the appeal.
- (2) Leave to appeal shall not be granted unless the judge, the master or the Court of Appeal hearing the application for leave is satisfied that –
- (a) the appeal has a reasonable prospect of success; or
 - (b) there is some other reason in the interests of justice why the appeal should be heard.
- (3) In this section, “master” (聆案官) means the Registrar, a deputy registrar or assistant registrar.

63B. Decision on leave to appeal final

Section 29
Rec 110-113,
& 115

No appeal lies from a decision of the Court of Appeal as to whether or not leave to appeal to it should be granted.

72. Rules of court

- (1) The Rules Committee may make rules of court regulating and prescribing –
- (a) the procedure, including the method of pleading in the Court;
 - (b) the practice to be followed in the Court;
 - (c) the procedure and practice to be followed in the Registry of the Court; and
 - (d) any matters incidental to the procedure or practice.
- (2) Without limiting the general nature of subsection (1), rules of court may be made for the following purposes –
- (a) prescribing the procedure for the transfer of proceedings between the Court and the Court of First Instance, **and between the Court and the Lands Tribunal**;
 - (b) prescribing the jurisdiction of the Court which the Registrar may exercise (including provision for appeal against decisions made in the exercise of the jurisdiction);
 - (c) regulating matters relating to the fees and costs of proceedings (including proceedings in connection with the administration of estates and trusts) in the Court and matters incidental to the proceedings;
 - (d) prescribing in what cases absent persons having an interest in a

Section 46
Lands Tribunal

- cause or matter are bound by any order made;
- (e) regulating the execution of the process of the Court, including –
 - (i) prohibiting judgment debtors and persons against whom civil claims are made from leaving Hong Kong and ordering the payment of compensation to them in prescribed circumstances;
 - (ii) ordering judgment debtors or officers of corporate judgment debtors to appear for examination and their examination; and
 - (iii) the arrest and imprisonment of judgment debtors;
 - (f) providing that, in any case where a document filed in, or in the custody of, the Registry of the Court is required to be produced to any court or tribunal (including an umpire or arbitrator) sitting elsewhere than at the Court –
 - (i) it shall not be necessary for any officer, whether served with a subpoena in that behalf or not, to attend for the purpose of producing the document; but
 - (ii) the document may be produced to the court or tribunal by sending it to the court or tribunal, in the manner prescribed in the rule, together with a certificate, in the form so prescribed, to the effect that the document has been filed in, or is in the custody of, the Registry,and any such certificate shall be prima facie evidence of the facts stated in it.
- (3) The power to make rules of court under this section includes power to make rules as to proceedings by or against the Government.
- (4) Rules of court made under this section apply to all proceedings by or against the Government insofar as they expressly purport so to do.
- (5) In the exercise of his discretion, a judge may excuse a party from compliance with any rule.

(Replaced 28 of 2000 s. 41)

72CA. Rules as to costs and interest

Section 34

(1) Notwithstanding sections 50 and 53, the Rules Committee may make rules of court for enabling the Registrar, in such circumstances as may be specified in the rules, to –

- (a) disallow all or part of any costs to be taxed pursuant to a costs order made by the Court;**
- (b) disallow all or part of any interest otherwise payable under section 50 on taxed costs, or reduce the period for which such interest is payable or the rate prescribed in section 50 at which such interest is payable; and**
- (c) increase the rate prescribed in section 50 at which interest on taxed costs or costs of taxation is payable.**

Remarks

(2) Rules made under this section may include incidental, supplementary and consequential provisions that the Rules Committee considers expedient.

(3) In this section, “Registrar” (司法常務官) includes a Master.